

# THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. XVI, No. 4

JANUARY, 1944  
COMPLETE NUMBER 305

PAGES 73-96

*Published by*

THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

*In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.*

New Illinois Non-Profit Corporation Act . . . . . 77

## Recent Decisions

Delaware—Notice of stockholders' meeting—merger . . 78

—Receivership—solvent concern . . . . . 79

Federal—Income tax—profit—sale of treasury stock . . 86

—Par reduced—cash distribution as dividend . . . . 86

Mississippi—Doing business—service on agent . . . . . 80

Missouri—Federal suit against qualified company . . . . 81

Montana—Tax on intangibles of subsidiary . . . . . 87

New York—Steamship corporation—service of process 81

—Suit—internal affairs of foreign company . . . . . 82

—Unauthorized sale of all assets—rescission . . . . . 79

Oklahoma—Doing business—conditional sales contract 83

—Inspection of books of foreign corporation . . . . . 83

Wisconsin—Privilege dividend tax as a deduction . . . 88

# RISKY, RISKY, MR. Z!

"Transfers of our company's stock are not of such volume," says Mr. Z, "that we can't make them ourselves and keep our own stock ledgers."

Yes, yes, Mr. Z, you are right.

But—here's the rub: Can you be sure that what you've done in each case is the right thing to have done? You know, Mr. Z, your stock certificates and stock books are the evidences of ownership of property—ownership of your company, of right to its dividends, or to share in its assets upon liquidation. Changing such evidence—issuing new certificates and cancelling old, and changing the records on the ledger—that's changing evidence of title to somebody's property, Mr. Z, and if a mistake is made in it, you can't laugh it off.

A good outside Transfer Agent is a source of great peace of mind to the officers and directors of even a small company.

Write or telephone any C T office for information as to what Corporation Trust transfer service would do for your company and how little it costs.

---

---

## CORPORATION TRUST

The  
Corporation Trust  
Company

C T  
Corporation System  
And Associated Companies

Albany 1.....158 State Street  
Atlanta 3...57 Forsyth Street, N. W.  
Baltimore 2.....10 Light Street  
Boston 9.....10 Post Office Square  
Buffalo 3.....295 Main Street  
Chicago 4....208 S. La Salle Street  
Cincinnati 2.....441 Vine Street  
Cleveland 14.....925 Euclid Avenue  
Dallas 1.....1309 Main Street  
Detroit 26.....719 Griswold Street  
Dover, Del.....30 Dover Green  
Hartford 3.....50 State Street  
Jersey City 2.....15 Exchange Place  
Los Angeles 13...510 S. Spring Street  
Minneapolis 1...409 Second Avenue S.  
New York 5.....120 Broadway  
Philadelphia 9...123 S. Broad Street  
Pittsburgh 22...535 Smithfield Street  
Portland, Me. 3...57 Exchange Street  
San Francisco 4...220 Montgomery St.  
Seattle 4.....1004 Second Avenue  
St. Louis 2.....314 North Broadway  
Washington 4....1329 E. St. N. W.  
Wilmington 99...100 West 10th Street

# THE CORPORATION JOURNAL

VOL. XVI, No. 4

JANUARY, 1944

PAGES 73-96

The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).

## Contents for January

	Page
New Illinois Non-Profit Corporation Act .....	77
Digests of Court Decisions, etc.	
Domestic Corporations .....	78
Foreign Corporations .....	80
Taxation .....	86
Appealed to The Supreme Court .....	89
Regulations and Rulings .....	90
<hr/>	
Some Important Matters for January and February .....	91

## **CORPORATION TRUST**

# The Corporation Trust Company CT Corporation System And Associated Companies

Albany.....158 State Street  
Atlanta.....57 Forsyth Street, N. W.  
Baltimore.....10 Light Street  
Boston.....10 Post Office Square  
Buffalo.....295 Main Street  
Chicago.....208 South LaSalle Street  
Cincinnati.....441 Vine Street  
Cleveland.....925 Euclid Avenue  
Dallas.....1309 Main Street  
Detroit.....719 Griswold Street  
Dover, Del.....30 Dover Green  
Hartford.....50 State Street

Jersey City.....15 Exchange Place  
Los Angeles.....510 S. Spring Street  
Minneapolis.....409 Second Avenue S.  
New York.....120 Broadway  
Philadelphia.....123 S. Broad Street  
Pittsburgh.....535 Smithfield Street  
Portland, Me.....57 Exchange Street  
San Francisco.....220 Montgomery Street  
Seattle.....1004 Second Avenue  
St. Louis.....314 North Broadway  
Washington.....1329 E. St. N.W.  
Wilmington.....100 West 10th Street

Having offices or representatives in every state and territory of the United States and in the District of Columbia and in every province of Canada, we:

1—obtain for lawyers, from official sources, any official information the lawyer needs for incorporating or qualifying a client in any jurisdiction:

2—under the lawyer's direction, attend to all clerical details of incorporation or qualification as each different jurisdiction may require—filing, recording, advertising, holding incorporators' meeting, etc.;

3—under the lawyer's direction, furnish the statutory office or agent required for either domestic or foreign corporation in any jurisdiction:

4—keep attorneys informed of all state taxes to be paid and reports to be filed by a client corporation in the state of incorporation and any states in which it may qualify as a foreign corporation.

Having completely equipped transfer departments at the New York, Jersey City and Wilmington offices we are able to serve at whichever office is preferred:

1—as Transfer or Co-Transfer Agent, or Registrar, for the securities of corporations;

2—as Custodian of Securities, Escrow Depositary or Depositary for Reorganization Committees, or Liquidating Agent for corporations being dissolved.

The associated companies' loose-leaf service division

### **COMMERCE CLEARING HOUSE, INC.**

NEW YORK      CHICAGO      WASHINGTON  
EMPIRE STATE BLDG.    214 N. MICHIGAN AVE.    MUNSEY BLDG.

—compiles and publishes a complete line of Loose Leaf Services covering new business laws and taxes, both Federal and State.

#### Partial List of Fields or Topics Covered

Federal Taxes • State and Local Taxes • Social Security • Liquor Control • Banking • Public Utilities • Securities • Insurance • Trade Regulation • Carriers • Aviation • Food, Drugs and Cosmetics • Bankruptcy • War Law • Chattel Mortgages • Conditional Sales • Labor • Trusts and Estates • Accountancy Law • Congressional and Legislative Reporting • U. S. Supreme Court Reporting • Canadian Taxes • Inheritance Taxes  
Federal Administrative Procedure

# New Illinois Non-Profit Corporation Act

The Illinois Legislature, through the passage of the "General Not For Profit Corporation Act," (Senate Bill No. 335), approved July 17, 1943, and becoming effective January 1, 1944, has enacted a comprehensive corporation law, applicable to both domestic and foreign non-profit companies.

## Application of Act

The Act provides for the incorporation of corporations not for profit, organized for certain designated purposes, permitting perpetual succession. It brings within its terms Illinois non-profit companies previously organized under Sections 29 to 34, inclusive, of an Act entitled "An Act Concerning Corporations" approved April 18, 1872, as amended, these sections being repealed by the 1943 Act. The law also gives such corporations broad general powers and enacts modern provisions regarding meetings of directors and members, etc., for the amendment of the Articles of Incorporation, for dissolution and for the merger or consolidation of two or more domestic non-profit corporations.

The new law also contains provisions applicable to "all foreign not for profit corporations conducting affairs in this State for a purpose or purposes for which a corporation might be organized under this Act." These purposes are:

"Charitable; benevolent, eleemosynary; educational; civic; patriotic; political; religious, social; literary; athletic; scientific; research; agricultural; horticultural; soil, crop, livestock and poultry improvement;

professional; commercial, industrial or trade association; electrification on a co-operative basis; and ownership of residential property on a co-operative basis."

## Qualification

*Foreign non-profit corporations to which the Act is applicable are required to procure a certificate of authority from the Secretary of State before conducting any affairs in the State, upon filing forms to be prescribed and furnished by the Secretary of State and furnishing duly authenticated copies of their articles of incorporation and all amendments thereto. Such foreign corporations appoint a registered agent and designate a registered office. Prior to the enactment of this law there were no provisions under which such qualification of foreign non-profit corporations might have been effected.*

## Registered Agent and Office

Each non-profit corporation to which the Act applies, domestic or foreign, is required to have and continuously maintain a registered agent and a registered office in the state. The registered office, which need not be the same as the company's principal office, is required to be identical with the office of the registered agent. The registered agent may be either a resident individual or a domestic or foreign corporation. Any process, notice or demand required or permitted by law to be served upon the corporation may be served upon such registered agent. *An Illinois non-profit company failing for ninety days to appoint and*

*maintain a registered agent becomes subject to involuntary dissolution.*

### Annual Reports

Each corporation organized under the Act and each foreign corporation to which the Act applies are required to file an Annual Report with the Secretary of State, beginning in the year next succeeding the calendar year in which articles of incorporation are filed, or in which authority is obtained to do business in the state, as the case may be, the Report being due between January 15 and the last day of February. The Report will be comprised of the

address of the registered office in Illinois and the name of the registered agent at such address, the names and addresses of the directors and officers and a brief statement of the character of the affairs which the corporation is actually conducting, and, in addition, in the case of a foreign company, the address of its principal office in the state or country in which it is organized.

Domestic non-profit corporations in existence prior to the effective date of the Act, January 1, 1944, will be required, as heretofore, to file an Annual Report with the Secretary of State between January 15 and February 29, 1944.

## Domestic Corporations

### Delaware.

Date of mailing notice of stockholders' meeting and meeting date excluded in calculating statutory twenty day period for meeting called to vote upon a merger; by-law permitting fixing of record date "not exceeding twenty days preceding the date of any meeting of stockholders" ruled invalid as to such a meeting. In a recent Federal District Court case, one of the questions raised involved the legality of the notice given to the stockholders of one of two merging Delaware companies of the stockholders' meeting at which the merger was to be voted upon. Section 59, Delaware Corporation Law, provides that "a copy of such notice shall be mailed to the last known postoffice address of each stockholder of each such corporation, at least twenty days prior to the date of such meeting." The notices of the meeting were mailed on June 6, 1943 to call attention to the stockholders' meeting on June 29, 1943, at which the merger vote was to be taken. The United States District Court, D. Delaware, in concluding that the notice given complied with Section 59, observed that the phrase "at least" has been interpreted by the Delaware courts in connection with the computation of periods of time to mean full days, and continued: "Applying the rule of the Delaware cases, I hold that the proper construction of Section 59 is that the notice required therein shall be given by mail for a period not less than twenty full days before the date of the stockholders' meeting. This means that both the day of the mailing of the notice, viz., June 6, and the day of the meeting, viz., June 29, should be excluded. With both such days excluded, it is apparent that more than the statutory period of twenty days was given if the June 6th date controls." The notice stated that the record date for determining stockholders entitled to notice and to vote should be June 9, this date having been fixed in accordance with a by-law permitting the directors to fix "a date, not exceeding twenty days preceding the



date of any meeting of stockholders" as such a record date. "Notices," said the court, "were sent to such persons as became stockholders between June 6 and June 9. Those who became stockholders on June 9 did not and could not receive the statutory twenty day notice. Since I am of the opinion that Section 59 requires that notice be mailed twenty full days before the meeting, it necessarily follows that the by-law provision permitting less than twenty days notice so far as it is applicable to Section 59 is invalid and of no effect and the action taken by the directors in fixing the record date thereunder must be disregarded." *MacCrone et al. v. American Capital Corporation et al.*, 51 F. Supp. 462. Hugh M. Morris and Alexander L. Nichols of Morris, Steel, Nichols & Arsh of Wilmington and Howell Van Auken of Detroit, Michigan, for plaintiffs. C. S. Layton of Richards, Layton & Finger of Wilmington and Alfred Jaretski, Jr. of Sullivan & Cromwell of New York City, for defendants.

**Mere dissatisfaction with results of corporate management of solvent concern ruled no ground for receivership.** Plaintiff preferred stockholder sought the appointment of a receiver to wind up and liquidate the defendant Delaware corporation. The United States District Court, District of Delaware, ruled that the complaint should be dismissed where defendant was a solvent going concern and the actual complaint was limited to mere dissatisfaction with the manner and results of corporate management, remarking: "The power of a court of equity to appoint a receiver to liquidate corporate assets where there is neither insolvency nor threat of such, and where no direct charge is made of mismanagement or total lack of management or fraud on the part of officers and directors, is unknown to our law." *Lewis v. Commonwealth Securities, Inc.*, 51 F. Supp. 33. C. Edward Duffy of Logan & Duffy of Wilmington and Unger & Pollack of New York City, for plaintiff. Clarence A. Southerland of Southerland, Berl & Potter of Wilmington and Berkley W. Henderson of Jones, Day, Cocklet & Reavis of Cleveland, Ohio, for defendant.

#### New York.

**Representative suit by stockholder of corporation which sold all of its assets without required statutory approval of two-thirds of its voting stock, dismissed as to purchaser where there was no offer of restoration of consideration received from purchaser.** Plaintiff stockholder instituted this representative stockholders' action against his corporation, its directors who had refused to institute it, and against another corporation to which the defendant directors had unanimously voted to sell all the assets of the company without the favorable vote of two-thirds of the voting stock, as required by Section 20 of the Stock Corporation Law. The directors had by written agreement sold and transferred the assets to the other company. Plaintiff sought to cancel the contract, to have the assets surrendered to his corporation, to recover damages for fraud and to obtain an accounting. He did not allege that his corporation had

returned or tendered the consideration paid for the property and rights transferred. The purchasing company argued that therefore the complaint was fatally defective as to it. The Supreme Court, Special Term, Chemung County, posed the question as to whether the bare allegation that the purchasing company acquired the assets from plaintiff's corporation, knowing that the sale was without the approval of two-thirds of the stockholders, as required by statute, which the court assumed was necessary under the circumstances, would constitute a fraud or otherwise support the action, and concluded that it would not. The court made the following observations: "We are cited to no cases holding that failure to comply with a statutory requirement in making a sale authorizes a recovery of the property sold without restoration. As a matter of justice, we think it should not." "An ultra vires transaction entered into by a corporation is as illegal as a sale of its assets without the consent of two-thirds of its stockholders. Nevertheless, a corporation cannot escape liability for an ultra vires act without returning that which it received." "It follows that a contract, though ultra vires, or not made in accordance with some statute, is binding at least until rescinded and rescission requires restoration." The court indicated that this rule applied to plaintiff's company and that, as that company made the contract without complying with the statute, it could not in equity set up its failure to so comply as a basis for rescission or damages without making restoration, and therefore plaintiff could not. A motion by the defendant purchasing company to dismiss the suit as insufficient and for severance of the action as to it was granted. *Losie v. Ken-Vic, Inc., et al.*, 43 N. Y. S. 2d 914. Sayles, Flannery & Evans (Pierre Evans, of counsel), of Elmira, for defendant Hilliard Corporation, for the motion. Thomas M. Losie of Elmira, plaintiff in person, opposed. (*Affirmed, per curiam*, 44 N. Y. S. 2d 473.)

## Foreign Corporations

### Mississippi.

Corporation having only an agent in state soliciting orders approved elsewhere ruled not subject to the jurisdiction. A judgment had been recovered in the lower court against the defendant, a foreign corporation and a traveling salesman representing it, for damages sustained in a collision with an automobile driven by the salesman. That court had overruled the corporation's plea questioning jurisdiction over the company. Upon appeal, the Supreme Court of Mississippi remarked that unless the corporation was found to be doing business in the state, it was not suable there. The court said that the testimony left no doubt that the company's only business was conducted by the traveling salesman, who solicited orders for watches and transmitted these to the corporation for approval, selling no merchandise, although carrying a stock of dummy watches. He was subject to general supervision by the company and was paid



by commission only. He furnished his own automobile, which he was driving when the injury occurred. The court ruled that the company was not "doing business" in the state and dismissed the suit as to it. *Knower et al. v. Baldwin*, 15 So. 2d 47. A. S. Johnston, Jr., of Biloxi and Livingston & Livingston of Prentiss, for appellants. Hall & Hall of Columbia, for appellee.

### Missouri.

**Licensed foreign corporation held subject to suit in Federal courts of state.** Plaintiff, a resident of Georgia, had recovered a judgment against defendant Delaware corporation in the Illinois state courts. She sought to enforce collection of that judgment in an action filed in a federal District Court in Missouri, in which state defendant was licensed and doing business. Defendant corporation moved to dismiss the suit for improper venue, asserting that a citizen of Georgia may not sue a Delaware corporation in a Missouri federal court, invoking that portion of Section 51 of the Judicial Code, 28 U. S. C. A. Section 112, providing that "where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant." The District Court, Eastern District, Missouri, Southeastern Division, overruled the motion, however, referring to the fact that upon being authorized to do business in Missouri defendant had, in accordance with the requirements of the Missouri statutes, designated its principal agent in Missouri and the address where legal service upon it might be obtained by serving such agent, and held that compliance with such a statute had the effect of waiving the venue in the federal court, under the ruling of the Supreme Court of the United States in *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U. S. 165, 60 S. Ct. 153, (The Corporation Journal, January, 1940, page 83), where it was held that, in a suit based upon diversity of citizenship, a foreign corporation's appointment of an agent for the service of process in conformity with the laws of a state effected an actual consent to be sued in the federal as well as the state courts of that state. *Langan v. Robert Bros., Inc.*, 51 F. Supp. 502. Asa J. Wilbourn and DeWitt Twente of Cairo, Illinois, and J. M. Haw of Charleston, Missouri, for plaintiff. Oliver & Oliver of Cape Girardeau, Missouri, for defendant.

### New York.

**Foreign steamship corporation, engaged only in casual and occasional activities, ruled not doing business so as to be subject to service of process.** One of the defendants, a foreign steamship company, moved to dismiss the action as to it on the ground that it was not doing business in New York. It had no property in the state and maintained no office there. Two of its officers and directors were physically present in New York, but it was contended that their activities, except in isolated instances, were on behalf of another

defendant company, of which they were also officers. Plaintiff relied principally upon the fact that one of defendant steamship company's ships, while tied up in New York harbor, "entered into a contract of employment with plaintiff which was filed with the United States Shipping Commissioner in this state, and that on occasional instances one of its ships came into New York harbor. The referee has found that said defendant's vessels entered the waters of New York harbor on only a few occasions, and on all such occasions while in transit to oil terminals in New Jersey. Since the activities of the defendant's ships were taken over by the government, the ships entered the waters of New York harbor nine times in 1942 and six times in 1943, in each case in transit to terminals in New Jersey, except on one occasion when a vessel was obliged to have emergency repairs, at which time it docked within the State of New York. The facts clearly indicate that such activities of the Continental Steamship Company as may be said to be conducted in the State of New York are casual and occasional. In such circumstances it cannot be held to be doing business in the State of New York." The motion to dismiss the action as to the moving defendant was granted by the Supreme Court, Special Term, New York County. *Hefley v. Continental Oil Co. et al.*,\* 43 N. Y. S. 2d 679. George J. Engelman of New York City, for plaintiff. Burlingham, Veeder, Clark & Hupper. (C. B. M. O'Kelley, of counsel), of New York City, for defendants.

---

\* The full text of this opinion is printed in *The Corporation Tax Service*, New York, page 20,808.

**Jurisdiction declined in representative suit involving internal affairs of foreign corporation.** Plaintiff preferred stockholder in defendant Delaware corporation sought, in a representative action, to have a New York court require defendant to carry out the terms of a section of the company's charter relating to the gradual redemption of the preferred stock through a sinking fund. The New York Supreme Court, Appellate Division, First Department, observed that "where as here, the controversy relates solely to the management of the internal affairs of a foreign corporation, it has been the settled policy of our courts to decline jurisdiction." "Plaintiff is here attempting to obtain a construction of defendant's charter to be binding upon many owners of preferred stock scattered all over the nation. In the interests of efficiency, expediency and justice the intent and meaning of defendant's charter should be passed upon by the courts of the State of Delaware, the corporation's domicile (*Rogers v. Guaranty Trust Co.*, 288 U. S. 123). We think that part of the motion to dismiss the complaint on the ground that the court should decline jurisdiction of the subject matter of the action should have been granted." *Nothiger v. Corroon & Reynolds Corporation*, 42 N. Y. S. 2d 103. Powers, Kaplan & Berger (Abraham Kaplan, of counsel; George I. Gross, on the brief), of New York City, for appellant. Edwin M. Slote and Edward M. Garlock of New York City, for respondent.

**Oklahoma.**

Shipment of incubators into state under conditional sales contract, involving surrender of a used incubator for credit, ruled interstate transaction not requiring seller corporation to be qualified in order to maintain action. Plaintiff was a foreign corporation, engaged in Michigan in the manufacture of incubators. Defendant, a resident of Oklahoma, ordered two incubators under a conditional sales contract where by defendant was to deliver to plaintiff a used incubator, receive a credit therefor and to execute eight notes for \$125. each as representing the balance due on the new incubators. The incubators were shipped into Oklahoma to defendant and the used incubator was sent by defendant, at plaintiff's direction, to a person in Colorado. The notes were executed and one of them was paid but defendant had refused to pay any of the others. Thereupon plaintiff had elected to terminate the contract and reclaim its property and instituted this action in replevin to recover possession of the two incubators, title to which it had retained under the conditional sales contract. Defendant alleged that plaintiff could not enforce the contract because it was doing business in the state without being authorized and plaintiff replied that the transaction, its only activity in Oklahoma so far as the evidence showed, was purely an interstate transaction. The Supreme Court of Oklahoma rendered judgment for the plaintiff, holding that the transaction was clearly one in interstate commerce, making the following observations: "The fact that plaintiff sent the conditional sales contract and the notes along with the bill of lading and directed defendant to the office of a notary public to execute said contract and notes, and thereafter requested defendant to ship the used incubator to a named person in Colorado and paid defendant for his services and expenses in connection therewith were all incidental to the interstate transaction which plaintiff had with the defendant and did not constitute doing business in the state." "Neither would the fact that plaintiff's representative may have given defendant some advice relative to the operation of the incubators change the situation." *Cugley Incubator Company v. Franklin*, 142 P. 2d 125. Commerce Clearing House Court Decisions Requisition No. 310176. A. Francis Porta of El Reno, for plaintiff in error. Melton, McElroy & Vaughn of Chickasha, for defendant in error.

Oklahoma statute, making books and records of "all corporations for profit" open to inspection of stockholders and certain others, held applicable to a foreign corporation. In the lower court, stockholders of a Delaware corporation, licensed to do business in Oklahoma, where it had its principal office, obtained an alternative writ of mandamus to permit them to inspect the corporate books and records. Upon appeal, the company contended that an Oklahoma statute, Title 18, Sec. 141, O. S. 1941, requiring "all corporations for profit" to keep the records of their business transactions and data regarding all meetings of directors and stockholders "open to the



## BOOTBO

Like the tax boots he comes, to a nation of the nightmares, tax report to be tax to b

And what!

Shall a citizen then because of the taxation

Nonsense! mightn't a system work the better watching—where, who systematized, and the request and that time.

Have you a citizen while to learn the Corporation's law

# BOOTS, BOOTS, BOOTS!

Boots bearing down on the delirious soldier of Kipling's poem, a nation doing business in states outside that of its incorporation, taxes, taxes, taxes . . . tax to be paid, report to be filed, tax to be paid . . . file it . . . pay it . . . file it . . . pay . . .

can then not do business where it wishes, and has the chance, just the location of taxes and reports to be attended to?

nightmare is taken out of it all by the Corporation Trust system—the attorneys of *thousands* of different corporations. All the detail of when to do—in all the states of the Union—is organized and the requirements reduced, for each corporation's attorney, to one thing at a

you a client doing business outside its own state? Then you will find it worth-  
the Corporation Trust system works—for the corporation but only through the



inspection of any director, member, stockholder or creditor of the corporation," had been erroneously applied to it, as the statute was intended to apply to Oklahoma companies only. The Supreme Court of Oklahoma, however, affirmed the judgment of the lower court, ruling that the section clearly applied to a foreign corporation. It also overruled a contention of the corporation to the effect that, while the stockholders were entitled to inspect the books and records, their right existed under the common rule relative to inspection in effect in Delaware, and that it was incumbent upon the stockholders to allege and establish that their motives were proper and that they were not seeking inspection for the gratification of mere idle curiosity or for speculative purposes or for purposes hostile to the interests of the corporation or to annoy and harass the company, or for any purpose detrimental to it, the court regarding the Oklahoma statutory provisions as taking precedence over the rule in effect in the state in which the corporation was organized. *Toklan Royalty Corporation et al. v. Tiffany et al.*, 141 P. 2d 571. I. J. Underwood, Paul Pinson and Jack Campbell of Tulsa, for plaintiffs in error. E. D. Gillespie and H. L. Smith of Tulsa, for defendants in error.

## Taxation

### Federal.

Purchase of its own stock by a corporation and its later sale at a profit held to result in a gain taxable as income to the company. Appellee corporation had purchased 50 shares of its own capital stock for \$5,000 in order to accommodate one of its stockholders. After holding the stock in its treasury for two years, it was sold to one of its officers for \$9,871.45. The Commissioner of Internal Revenue ruled that the difference of \$4,871.45 constituted taxable income and assessed a tax thereon. The United States Circuit Court of Appeals, Eighth Circuit, reversed a judgment in favor of the company, which had sought to recover the tax, and held the profit to be taxable income, following decisions to the same effect in the Second, Fifth and Eighth Circuits. *United States v. Stern Bros. & Co.*,\* 136 F. 2d 488. S. Dee Hanson, Sp. Asst. to Atty. General (Samuel O. Clark, Jr., Asst. Atty. General, Sewall Key and Helen R. Carlross, Sp. Assts. to Atty. General, Maurice M. Mulligan, U. S. Atty., of Kansas City, Mo., and Richard H. Musser, Asst. U. S. Atty., of Holden, Mo., on the brief) for appellant. John H. McEvers and Ryland, Stinson Mag & Thomson of Kansas City, Mo., for appellee.

---

\* The full text of this opinion is printed in the **CCH Standard Federal Tax Service—1943—**¶ 9500.

Cash distribution, following corresponding reduction in par value, not found to be in liquidation of stock, ruled taxable as on ordinary dividend. Petitioners owned stock in two companies. Each corporation, finding its surplus adequate to permit a reduction in the par value of its capital stock, in one case from \$20 to \$18 and in the other



from \$100 to \$70, and to effect a distribution to the shareholders of \$2 and \$30 per share, respectively, adopted a resolution to bring about such a reduction. The question was whether the distribution was to be regarded as a taxable dividend under the Revenue Act of 1934. Petitioners contended that the distribution was in partial liquidation and therefore not taxable. One of the resolutions adopted by the shareholders stated that the company was in a position to "effect a return of \$2 per share to its stockholders as a capital distribution in partial liquidation of its stock." The United States Circuit Court of Appeals, Ninth Circuit, affirmed a decision of the United States Board of Tax Appeals holding the distributions to be taxable. The Board had not found that the distributions were in partial or in complete cancellation or redemption of a part of the companies' stock. The court observed that the evidence did not require such a finding and remarked that it was immaterial that some of the shares were acquired as stock dividends, and that some were later acquired by purchase, for, regardless of the time or manner of their acquisition, all the shares were entitled to be, and all were, treated alike in the distributions and, as to all the shares, the distributions were taxable dividends. *Wilcox et al. v. Commissioner of Internal Revenue*,\* 137 F. 2d 136. Urban E. Wild and Milton Cades of Honolulu, T. H., for petitioners. Samuel O. Clark, Jr., Asst. U. S. Atty. General and Sewall Key, Carleton Fox, J. Louis Monarch and F. E. Youngman, Sp. Assts. to Atty. General, for respondent.

---

\* The full text of this opinion is printed in the **CCH Standard Federal Tax Service**—1943—¶ 9532.

### Montana.

For ad valorem tax purposes, intangibles arising in Montana from business carried on by a Montana company, which was a wholly owned subsidiary of a Delaware company of the same name not transacting business in Montana, purchased by the parent company, held taxable to either company. Plaintiff Montana credit corporation sought to enjoin the county of Silver Bow and the city of Butte from collecting an ad valorem tax levied on credits and receivables valued by the county assessor as of the 1937 assessment date as being in excess of \$500,000. These intangibles arose out of transactions of plaintiff within Montana. An agreement entered into in 1934, existed between plaintiff and its parent Delaware company, having an identical name and owning all of plaintiff's stock, under which it agreed to endorse and assign to the parent its notes and contracts and to guarantee their payment. Plaintiff contended that upon such purchase it divested itself of such receivables and was, therefore, not taxable upon them. The Montana Supreme Court, however, took an opposite view and reversed a judgment in favor of plaintiff. It ruled that the defendants were entitled to collect the tax from either company, upon evidence which showed plaintiff continued to receive, in Montana, all the remittances and collections on such receivables,

so claimed to have been "sold," and other evidence which indicated such business had been carried on in Montana by the Delaware company prior to plaintiff's incorporation and tending to show plaintiff was the agent or *alter ego* of its parent. *Commercial Credit Co. v. O'Brien*,\* Montana Supreme Court, October 7, 1943. Commerce Clearing House Court Decisions Requisition No. 309386. I. W. Choate, R. V. Bottomly, States' Attorneys, of Helena, Frank J. Roe, County Attorney. P. E. Geagan, Butte City Attorney, for appellant. R. F. Gaines, of Butte, for respondent.

---

\* The full text of this opinion is printed in *The Corporation Tax Service*, Montana, page 2303.

### Wisconsin.

Federal Circuit Court of Appeals rules that the privilege dividend tax, being a tax upon the stockholder and not upon the corporation, is not deductible by the corporation in computing its Federal income tax. In *Wisconsin Gas and Electric Company v. United States*, 46 F. Supp. 929, (The Corporation Journal, December, 1942, page 284), the United States District Court, Eastern District of Wisconsin, held that the Wisconsin privilege dividend tax, being regarded as an additional tax on corporate earnings, was deductible by a corporation in computing its Federal income tax under the Revenue Act of 1934, Sec. 23(c). Upon appeal, the United States Circuit Court of Appeals, Seventh Circuit, has reversed the District Court and ruled that the tax is not deductible by the corporation. In doing so, the court referred to a decision of the Wisconsin Supreme Court, involving the same corporation, in which the company claimed the payment of the privilege dividend tax as a deductible expense against its gross income under the Wisconsin Income Tax Law, a claim which the State court denied, holding that the tax was specifically laid upon the stockholder and deductible from the dividend and could not be treated by the corporation as an expense of doing business. (*Wisconsin Gas and Electric Company v. Wisconsin Tax Department*, 243 Wis. 216, 10 N. W. 2d 140.) Reference was also made to another Wisconsin Supreme Court decision, *Blid v. Wisconsin Foundry and Machine Co.*, 243 Wis. 221, 10 N. W. 2d 142, where a preferred stockholder was unsuccessful in an attempt to recover the amount withheld by a corporation as the tax from a dividend declared. Emphasizing these decisions of the Wisconsin Supreme Court, which the Federal court would follow, the Circuit Court of Appeals held that the corporation was not entitled to claim the deduction. *Wisconsin Gas and Electric Company v. United States*,\* United States Circuit Court of Appeals, Seventh Circuit, November 8, 1943. Commerce Clearing House Court Decisions Requisition No. 310911.

---

\* The full text of this opinion is printed in *The Corporation Tax Service* Wisconsin, page 1980.

## Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.\*

**ARKANSAS.** Docket No. 311. *McLeod, Commissioner of Revenues v. J. E. Diltworth Company et al.*, 171 S. W. 2d 62. (The Corporation Journal, October, 1943, page 16.) Gross receipts tax—solicitation by traveling representatives, followed by shipment into state in interstate commerce. Petition for writ of certiorari filed, August 31, 1943. Certiorari granted, October 25, 1943.

**INDIANA.** Docket No. 355. *Department of Treasury of Indiana et al. v. International Harvester Co. et al.*, 47 N. E. 2d 150. (The Corporation Journal, June, 1943, page 423.) Gross income tax—sales effected by branch offices outside Indiana to dealers and users located in Indiana. Appeal filed, September 15, 1943. Probable jurisdiction noted, October 25, 1943.

**IOWA.** Docket No. 441. *State Tax Commission v. General Trading Company*, 10 N. W. 2d 659. (The Corporation Journal, October, 1943, page 18.) Liability of unlicensed foreign corporation to collection of Iowa use tax on orders solicited by traveling salesmen in state, approved in another state, from which goods were shipped in interstate commerce into Iowa. Petition for certiorari filed, October 19, 1943. Certiorari granted, November 22, 1943.

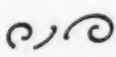
**KENTUCKY.** Docket No. 154. *Anderson National Bank et al. v. Reeves*, 170 S. W. 2d 370, 575. (The Corporation Journal, October, 1943, page 9.) Validity of Kentucky Escheat Act of 1940. Appeal filed, July 12, 1943. Jurisdiction noted, October 11, 1943.

**MINNESOTA.** Docket No. 33. *Northwest Airlines, Inc. v. State of Minnesota*, 7 N. W. 2d 691. (The Corporation Journal, March, 1943, page 351.) State taxation—assessment of Minnesota personal property tax against entire fleet of airplanes operated by Minnesota corporation in interstate commerce. Petition for certiorari filed, April 2, 1943. Certiorari granted, May 10, 1943. Argued, October 19 and 20, 1943.

**MINNESOTA.** Docket No. 291. *Union Brokerage Co. v. Jensen et al.*, 9 N. W. 2d 721. (The Corporation Journal, October, 1943, page 14.) Unlicensed foreign customhouse brokerage corporation—doing business—right to sue. Petition for certiorari filed, August 26, 1943. Certiorari granted, October 11, 1943.

**WASHINGTON.** Docket No. 213. *Twisp Mining & Smelting Co. v. Chelan Mining Co. et al.*, 133 P. 2d 300. (The Corporation Journal, December, 1943, page 59.) Mining corporation—by-law prescribing number of directors necessary to constitute quorum—validity of deed executed under authorization of board of directors—estoppel. Petition for certiorari filed, July 30, 1943. October 11, 1943: "Per curiam: The appeal is dismissed for failure to comply with Rule 12, paragraph 1. The petition for writ of certiorari is denied." December 6, 1943: "Per curiam: Appellant having filed a petition for rehearing and an amended jurisdictional statement which conforms to Rule 12, par. 1, the petition for rehearing is granted and the order of October 11, 1943, dismissing the appeal and denying the petition for writ of certiorari is vacated. The appeal is dismissed for want of jurisdiction. Section 237(a) of the Judicial Code, as amended, 28 U.S.C. sec. 344(a). The petition for a writ of certiorari is denied. Mr. Justice Douglas took no part in the consideration or decision of this case."

\* Data compiled from CCH U. S. Supreme Court Service, 1943-1944.



## Regulations and Rulings

**COLORADO**—The tax imposed by the Federal Transportation Tax Act becomes a part of the price paid by the consumer and becomes taxable, under the sales tax requirements, regardless of how it was billed or regardless of price regulations of the Office of Price Administration. (Departmental Ruling, Colorado CT Service, ¶ 7973.)

**INDIANA**—The Attorney General has ruled that a corporation organized for profit on June 21, 1902, pursuant to the provisions of Chapter 127, Laws 1901, and limited in existence by its charter for twenty years, cannot have its life extended under the provisions of Sections 46 and 47 of the Indiana General Corporation Act of 1929, as amended, where the articles of acceptance were filed with the office of the Secretary of State in 1943. (Indiana CT, ¶ .405.)

A foreign agricultural cooperative association, admitted under the provisions of Chapter 284, Laws of 1935, is liable for a fee for increase in the number of shares of its capital stock represented in Indiana. (Opinion of Attorney General to Chief Corporation Counsel, Indiana CT (Corporation Tax) Service, ¶ .406.)

**IOWA**—The State Tax Commission has indicated that, for income tax purposes, service corporations, such as advertising sales finance and brokerage companies, apportion their net income according to the sales ratio or by separate accounting. Their net income follows either the residence of the recipient of the income or the situs of the business under the Iowa rules of apportionment. (Iowa CT, ¶ 1913.)

**LOUISIANA**—The Board of Tax Appeals has ruled that a foreign corporation cannot be taxed under the Louisiana income tax law on dividends received from shares of stock held by it in foreign subsidiary corporations. (Louisiana CT, ¶ 15-005.)

**MICHIGAN**—The Department of Revenue has stated that it will accept 1943 intangibles tax returns (due within 90 days after the close of the tax year) with the average values of such credits as bank deposits, notes receivable and accounts receivable computed on the basis of the balances as of June 30, 1943, provided the balances on that date reasonably reflect the average values for the year; where it is otherwise, taxpayers will be required to file on the basis of true averages. (Michigan CT Service, Report No. 103.)

Articles of tangible personal property commonly known as commercial advertising and produced upon the special order of the purchaser are exempt from the sales tax. (Ruling of State Board of Tax Appeals, Michigan CT, ¶ 65-072.)

**MINNESOTA**—Bookkeeping and accounting machines owned by a foreign corporation and leased to persons in several different counties in Minnesota, are subject to doubt as to their tax situs for property tax purposes, and the place of listing such property should be determined by the Commissioner of Taxation. (Opinion of Attorney General to the Commissioner of Taxation, Minnesota CT, ¶ 29-008.)

**OHIO**—The Board of Tax Appeals has fixed November 10, 1943, as the date as of which deposits in financial institutions are to be assessed. (Ohio CT, ¶ 20-621.01.)

## Some Important Matters for January and February

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

**ALABAMA**—Annual Application for Permit to do Business due on or before February 1.—Domestic and Foreign Corporations.

Report of Resident Stockholders and Bondholders due on or before February 1.—Domestic and Foreign Corporations.

**ALASKA**—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

**ARKANSAS**—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

**CALIFORNIA**—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

**COLORADO**—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

**CONNECTICUT**—Annual Report due on or before February 15 (if the corporation was organized or was qualified between January 1 and June 30 of any previous year).—Domestic and Foreign Corporations.

**DELAWARE**—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations making payments for personal services to Delaware residents and non-residents.

**DISTRICT OF COLUMBIA**—Annual Report due between January 1 and January 20.—Domestic Corporations.

**DOMINION OF CANADA**—Returns of Information at the source due on or before February 29.—Domestic and Foreign Corporations.

**ILLINOIS**—Annual Report due between January 15 and February 29.—Domestic and Foreign Corporations.

**INDIANA**—Gross Income Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before January 31.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

**IOWA**—Quarterly Retail Sales Tax Returns and Payment due on or before January 20.—Domestic and Foreign Corporations.

**KANSAS**—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

**KENTUCKY**—Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

**LOUISIANA**—Annual Report due on or before February 1.—Domestic Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Capital Stock Statement due on or before March 1.—Foreign Corporations.

**MAINE**—Annual License Fee due on or before March 1.—Foreign Corporations.

**MARYLAND**—Returns of Information at the source and Returns of Tax withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

**MASSACHUSETTS**—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

**MINNESOTA**—Annual Report due between January 1 and April 1.—Foreign Corporations.

Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before January 15.—Domestic and Foreign Corporations.

**MISSISSIPPI**—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

**MISSOURI**—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

**MONTANA**—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

**NEW YORK**—Annual Franchise Tax Report and Tax of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations. Forms 41 CT and 42 CT, Art. 9 of the Tax Law.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

**NORTH DAKOTA**—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.



OHIO—Report to Department of Industrial Relations due on or before February 1.—Domestic and Foreign Corporations employing three or more persons in Ohio.

Retail Sales Tax Return and Vendors' Excise Tax due on or before January 31.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

OKLAHOMA—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

OREGON—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

PENNSYLVANIA—Report of Unclaimed Dividends, Credits, etc., due in January.—Domestic Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Report due during February.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

UNITED STATES—Withholding at source due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

UTAH—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Annual Business and Occupation (Gross Sales) Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

# The Corporation Trust Company's Supplementary Literature

*In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5, N. Y.*

**What Constitutes Doing Business.** (Revised to October 1, 1943.) A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

**Cross Hauling . . . and the Answer, Spot Stocks.** Explains how the possible wartime restrictions on cross-hauling point the way to volunteer peacetime economies through the keeping of warehouse stocks at strategic shipping points.

**Amendments to Delaware Corporation Law, 1943.** Contains complete text of the amendments adopted at the 1943 session of the legislature, giving for each one a brief explanation of its purpose and effect.

**Contracts You Can't Enforce.** Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

**After the Agent for Service Is Gone.** What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

**Delaware Corporations.** Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

**Spot Stocks—and Interstate Commerce.** Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

**When a Corporation Leaves Home.** A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

**We've Always Got Along This Way.** A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

**What! We Need a Transfer Agent? Nonsense!** The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

**Judgment by Default.** Gives the gist of *Rarden v. Baker* and similar cases, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

# TAXATION---One of America's Biggest Industries!

With an estimated volume of some 27 billion dollars for 1943, taxation takes a top place in the ranks of American "big business." No other economic activity touches so intimately the lives and fortunes of us all.

Accordingly nowhere else is prompt, accurate, and continuing information about new developments so important to the effective conduct of corporate and personal business affairs as in the field of federal and state taxation. It is here that the dependable CCH loose leaf tax and business law reporting Services play their essential parts.

There is a CCH loose leaf Service for every live and important phase of tax and business law. May we send details?



**COMMERCE CLEARING HOUSE, INC.**

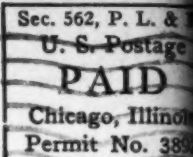
PUBLISHERS OF LOOSE LEAF LAW REPORTING SERVICES

NEW YORK 1  
EMPIRE STATE BLDG.

CHICAGO 1  
214 N. MICHIGAN AVE.

WASHINGTON 4  
MUNSEY BLDG.

**THE CORPORATION TRUST COMPANY**  
120 BROADWAY, NEW YORK, N. Y.



POSTMASTER—If undeliverable FOR ANY REASON, notify sender, stating reason (and new address, if known, if addressee has moved) on **FORM 3547** postage for which is guaranteed.

10% of your gross income  
since Pearl Harbor should  
be in War Bonds. Is it?  
Now is the time to check  
and act.

. &  
tage  
D  
linoh  
389